



March 10, 1999

Mr. Richard Monroe
General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Building
125 East 11th Street
Austin, Texas 78701-2483

OR99-0691

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 122649.

The Texas Department of Transportation (the "department") received an open records request for six categories of information pertaining to certain parcels of real estate that are subject to acquisition by the state in connection with a highway construction project. You contend that information responsive to two of those categories is excepted from required public disclosure.¹ The specific information at issue consists of the following:

1. The **dollar amount per square foot** offered or to be offered to each of the property owners of Parcels 319, 320, 321, 322, 323, 324, 325, and 327 for purchase by [the department] of portions of these lots needed for construction of US 59S.

....

3. All information about or concerning the **property(ies) used as a basis or as a comparable property for the counter offer(s)** accepted by [the department] referred to in No. 2 above. [Emphasis in original.]

¹Because you contend that only two categories of information are excepted from public disclosure, we assume the department has released to the requestor all information responsive to the other four categories. If it has not, it must do so at this time.

You have submitted to this office as responsive to items 1 and 3 a representative sample of records. You seek to withhold these records pursuant to section 552.105 of the Government Code, which excepts from required public disclosure

information relating to

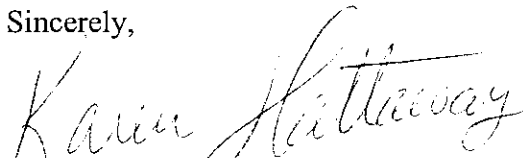
(1) the location of real or personal property for a public purpose prior to public announcement of the project; or

(2) appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property.

“The opinions construing section [552.105], as well as the actual language of the exception, tie the provision to situations entailing the expenditure of public funds to acquire or use the subject property for public purposes in order to prevent speculation from inflating the price.” Open Records Decision No. 590 at 4 (1991); *see also* Open Records Decision No. 357 (1982). You have not informed this office as to which subsection of section 552.105 you believe applies to the requested information. Nor have you informed us that the department intends to acquire each of the referenced parcels that are the subject of this request. Finally, you have not informed this office that the contract for any of the referenced properties is still pending. *See* Open Records Decision No. 222 (1979) (applicability of exception ends upon governmental body’s acquisition of property). We therefore conclude that you have failed to meet your burden under section 552.301 of the Government Code to demonstrate the applicability of section 552.105. Because you have raised no other exception to public disclosure, we conclude that the department must release the information at issue in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 122649

Enclosures: Submitted documents

cc: Ms. Adele S. Buchman
1541 Castle Court
Houston, Texas 77006
(w/o enclosures)